

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

MICHAEL TACKETT,	)	
	)	
Petitioner,	)	Civil Action No. 20-332 (Erie)
	)	
v.	)	District Judge W. Scott Hardy
	)	Magistrate Judge Richard A. Lanzillo
BARRY SMITH, <i>et al.</i> ,	)	
	)	
Respondents.	)	

**MEMORANDUM ORDER**

This matter comes before the Court on the Report and Recommendation (“R&R”) entered by Magistrate Judge Richard A. Lanzillo on October 12, 2021. (Docket No. 18). Petitioner Michael Tackett, an inmate incarcerated at the State Correctional Institution at Houtzdale, initiated this action by filing a Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus. (Docket No. 3). Respondents filed a Motion to Dismiss the Petition for Lack of Timely Filing and/or for Failure to Exhaust State Court Remedies, in which they raises two defenses: first, the Petition is untimely; and second, each of the four grounds for relief raised in the Petition has been procedurally defaulted. (Docket No. 11). The R&R recommends that Respondents’ Motion to Dismiss should be granted because the Petition is untimely.<sup>1</sup> (*See* Docket No. 18 at 3-6).

Service of the R&R was made on Respondents through the Court’s CM/ECF system, and any objections were due by October 26, 2021. Service of the R&R was made on Petitioner by mail, and any objections were due by October 29, 2021. Thereafter, no party filed any objections to the R&R.

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<sup>1</sup> As set forth in the R&R, because Respondents’ timeliness defense is dispositive, the Court need not consider whether Petitioner’s claims are also procedurally defaulted.

The Federal Rules of Civil Procedure provide that a party may file specific written objections to the proposed findings and recommendations of a magistrate judge, and a district judge must conduct a *de novo* review of any part of the R&R that has been properly objected to. Fed. R. Civ. P. 72(b)(2), (b)(3); 28 U.S.C. § 636(b)(1). Here, however, because no party filed any objections to the R&R, which explicitly stated that failure to file timely objections “may constitute a waiver of appellate rights,” (Docket No. 18 at 7), this Court reviews the magistrate judge’s decision for plain error. *See Tice v. Wilson*, 425 F. Supp. 2d 676, 680 (W.D. Pa. 2006); *see also* Fed. R. Civ. P. 72(b), Advisory Committee Notes (“When no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.”).

In this case, upon careful review of the R&R and the entire record, including the Petition, Respondents’ Motion to Dismiss and Petitioner’s Response, (Docket Nos. 3, 11, 17, 18), and finding no plain error on the face of the record, the Court will accept Judge Lanzillo’s recommendation that Respondents’ motion be granted given that the Petition is untimely. As such, the Court will adopt the R&R as the Opinion of the Court as more specifically set forth below.

Accordingly, in view of the foregoing, the Court enters the following Order:

AND NOW, this 8<sup>th</sup> day of November, 2021,

IT IS HEREBY ORDERED that the R&R (Docket No. 18) is ADOPTED as the Opinion of the Court.

For the reasons set forth in the R&R, IT IS FURTHER ORDERED as follows:

- (1) Respondents’ Motion to Dismiss for Lack of Timely Filing and/or for Failure to Exhaust State Court Remedies (Docket No. 11) is GRANTED;

(2) Petitioner's Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus (Docket No.

3) is DISMISSED; and

(3) The Court will not issue a certificate of appealability because jurists of reason would

not find it debatable that Petitioner's claims are untimely.

IT IS FURTHER ORDERED that the Clerk of Court shall mark this case CLOSED.

s/ W. Scott Hardy

W. Scott Hardy

United States District Judge

cc/ecf: All counsel of record

Michael Tackett (via U.S. Mail)

JT 3227

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